

### **REMARKS**

Claims 1, 3, 4, 6, 8-10, 12, 14-28, and 34-45 were pending in the application, of which claims 14-16, 18-28, and 35 were previously withdrawn from consideration. Upon entry of this Amendment, claims 1, 3, 4, 6, 8-10, 12, 14-28, and 34-45 will remain pending in the application. Of those, claims 1, 3, 4, 6, 8-10, 12, 17, 34, and 36-45 are presented for further examination. Prompt and favorable consideration of these claims is respectfully requested.

Applicants also request rejoinder of withdrawn claims 14-16, 18-28, and 35 if generic claim 1 from which they depend is found allowable.

#### **I. Claim Rejections: 35 U.S.C. § 102**

Claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, and 41-45 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Darbut et al.* (U.S. 6,597,793). Applicants request reconsideration and withdrawal of the rejection of these claims for at least the following reasons.

At the outset, Applicants point out that independent claims 1, 36, and 45 are amended herein. As amended, claim 1 recites, in part, that the microphone assembly includes a casing and, within the casing, one or more electrical controlling devices that can be operated by a user for selectively controlling the operation of the assembly. Claim 36 recites, in part, that the sound inlet port includes an electrical controlling device forming at least part of the sound inlet port. And claim 45 recites, in part, that the microphone assembly includes an electrical controlling device that can be operated by a user for selectively controlling the operation of the assembly. Support in the specification for these amendments can be found in Applicants' filed application, at the least, at page 4, lines 22-24, and at page 5, lines 10-30.

*Darbut et al.* do not teach all of the features of Applicants' claims, including independent claims 1, 36, and 45 described above. For example, the newly cited *Darbut et al.* reference does not teach, at the least, an electrical controlling device. Instead, *Darbut et al.* teach a hearing aid construction 10 having a switch with "a mechanical switching mechanism 15" (*Darbut et al.*, column 2, line 38, and Fig. 1). The *Darbut et al.* hearing aid construction 10 includes a directional microphone 26 having first and second acoustic ports 30 and 32 (*Darbut et al.*, column 2, lines 48-57, and Figs. 2 and

3). The mechanical switching mechanism 15 rotates relative to the microphone 26 between different positions to establish different acoustic paths and to thereby shift the microphone construction between a directional mode and an omnidirectional mode (*Darbut et al.*, column 4, lines 25-43). The switching is done exclusively by moving mechanical parts; no electrical parts are involved.

Similarly, previously cited *Killion et al.* (U.S. 6,876,749) do not teach all of the features of Applicants' claims, including independent claims 1, 36, and 45 described above (e.g., at the least, an electrical controlling device, etc.). As with *Darbut et al.*, *Killion et al.* teach a mechanical actuator switch 10. Switching between a directional mode and an omnidirectional mode in *Killion et al.* is effected by sliding the actuator switch 10 between positions where a sound inlet tube 13 is covered and uncovered, respectively. The electrical contact 12 in *Killion et al.* only "serves to indicate that the omni-directional position has been selected" (*Killion et al.*, column 3, lines 24-32). The switching, however, is done exclusively by moving mechanical parts; no electrical parts are involved.

With regard to dependent claim 9, the Office states that "it is inherent that the operations of the *Darbut* hearing aid comprises powering down or activate the device (on/off switch)" (Office action, page 3, lines 12-13). The powering down of the hearing aid construction 10 in *Darbut et al.*, however, cannot be facilitated by the mechanical switching mechanism 15 described since that switching mechanism 15 is an acoustical switch having only mechanical components for modifying acoustical paths. In contrast, powering down is by nature an electrical operation. Applicants thus submit that *Darbut et al.* fail to teach (expressly or inherently) the features recited in claim 9.

The references of record thus teach acoustical switches with purely mechanical parts that can be moved to cover and uncover acoustical ports and thereby modify acoustical paths that influence the acoustic performance of the respective devices. In contrast, Applicants' assembly includes an electrical controlling device that can be operated by a user for selectively controlling the operation of the assembly. Electrical controlling devices may include, for example, electrical switches that can be operated to control or change one or more electrical properties (such as electrical resistance or capacitance) between two or more electrical terminals (such as two wires). Acoustical switches, such as the physical controlling devices in *Darbut et al.* and *Killion et al.*,

change the acoustical properties between two or more acoustical ports; no electrical parts are involved.

Further, in the references of record in which mechanical switches are included, the acoustical properties are directly influenced by the position of the switches. In Applicants' assembly, the acoustical properties are unaffected by the position of the switch. This is evident from Applicants' Fig. 3 illustrating that the acoustic path is unchanged by the position of element 6.

Because *Darbut et al.* and the other references of record do not teach all of the features of Applicants' claims 1, 36, and 45, Applicants respectfully submit that the rejection of claims 1, 36, and 45 under 35 U.S.C. § 102(e) is traversed. Claims 3, 4, 6, 8-10, 12, 17, 34, and 43, which depend from claim 1, and claims 37-39, 41, 42, and 44, which depend from claim 36, are submitted to be patentable over the references of record, including *Darbut et al.*, for at least the reasons set forth above. Reconsideration and withdrawal of the rejection of claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, and 41-45 are respectfully requested.

## **II. Claim Rejections: 35 U.S.C. § 103**

Claims 9 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Darbut et al.*

Claim 9 depends indirectly from claim 1, which Applicant submits as patentable for at least the reasons stated above. Claim 9 is therefore submitted as patentable for at least the same reasons as stated for claim 1. Reconsideration and withdrawal of the rejection of claim 9 under 35 U.S.C. § 103(a) are respectfully requested.

Claim 40 depends indirectly from claim 36, which Applicant submits as patentable for at least the reasons stated above. Claim 40 is therefore submitted as patentable for at least the same reasons as stated for claim 36. Reconsideration and withdrawal of the rejection of claim 40 under 35 U.S.C. § 103(a) are respectfully requested.

## **III. Conclusion**

In view of the above remarks and amendments, Applicants respectfully submit that each of the Office action rejections has been addressed and overcome, placing the

present application in condition for allowance. A notice to that effect is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John A. Castellano at the telephone number of the undersigned below.

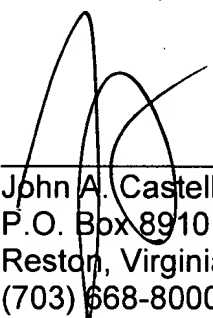
Applicants hereby petition under the provisions of 37 C.F.R. § 1.136(a) for an extension of time in which to respond to the outstanding Office Action and include a fee as set forth in 37 C.F.R. § 1.17(a) with this response for such extension of time.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. **08-0750** for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By



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John A. Castellano, Reg. No. 35,094  
P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

JAC/BGP/ljs